

FILED
Clerk
District Court

JAN 25 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

1 ERIC S. SMITH
2 SMITH & WILLIAMS
3 Attorneys at Law
4 P.O. Box 5133
Saipan MP 96950
Tel: 233-3334
Fax: 233-3336

5 Attorneys for Plaintiff

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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE**
NORTHERN MARIANA ISLANDS

10 ANGELO M. LABORCE,

Civil Action No. 05-0036

11 Plaintiff,

**RESPONSE TO MOTION TO
DISMISS OR IN ALTERNATIVE
FOR SUMMARY JUDGMENT**

12
13 v.

14 S-WON INC., P&S, INC., YOUNG
15 KYUN KIM, JOHN GERALD
16 PANGELINAN, DANIEL MUNA
QUITUGUA, DARREL MUNA
QUITUGUA and JOE CRISOSTOMO,

Date: February 9, 2006
Time: 9:00 a.m.
Judge: Alex R. Munson

17 Defendants.

18
19 **DEFENDANT DARREL'S**
20 **GROUND FOR DISMISSAL**

21 Plaintiff, ANGELO M. LABORCE, by and through his counsel, Smith & Williams,
22 responds to the Motion to Dismiss or in Alternative for Summary Judgment filed by
23 Defendant Darrel M Quitagua (Defendant Darrel), and states:

24 Defendant Darrel brings this motion under Federal Rules of Civil Procedure, Rule
25 12(b)(6) stating his motion should be granted if Plaintiff cannot support his claim which
26 would entitled him to relief. In support of his motion the Defendant Darrel correctly states
27 that the Court must treat all well plead allegations in the Complaint as true. Based upon that

1 alone, as the Complaint states a cause of action for Assault and Battery and Intentional
2 Inflection of Emotional Distress, Defendant Darrel's motion should be denied.

4 **FACTUAL ALLEGATIONS OF COMPLAINT**

5 The factual allegations of Paragraphs 40 through 46 of the Complaint state that on
6 or about April 29, 2004, Defendant Darrel and others entered into a conspiracy to burglarize
7 and steal money from the *Capitol Poker* and to harm anyone who interfered in the
8 furtherance of that criminal conspiracy. That in furtherance of the conspiracy, one of the
9 conspirators, Defendant John Pangelinan entered the premises of *Capitol Poker* with a gun,
10 proceeded to rob the occupants of the establishment, used the gun in furtherance of the armed
11 robbery during which time the Plaintiff was injured when Defendant John Pangelinan fired
12 the gun into the cashier's door.

13 These factual allegations constituted a valid part of the claim against Defendant
14 Darrel. Liability for the damages flow in from the assault and battery and emotional trauma
15 inflicted on Plaintiff by Defendant John Pangelinan in furtherance of the criminal conspiracy
16 of which Defendant Darrel was an active participant is the responsibility of all the defendant
17 including Defendant Darrel.

18 Plaintiff seeks relief against Defendant Darrel for his gunshot injuries in an amount
19 to be proven at trial. The allegations of fact in the Complaint support the relief requested
20 because the shooting of the lock on the cashier's door which injured Plaintiff was in
21 furtherance of the Defendants conspiracy to burglarize *Capitol Poker* and to commit a felony
22 therein by robbing the occupants of the business establishment by use of a deadly weapon.

23 The elements of an Assault and Battery in the Commonwealth of the Northern
24 Mariana Islands are: the unlawful striking, beating, wounding or otherwise committing
25 bodily harm to another, without the other persons consent. 6 CMC § 1202(a). A battery is
26 any wilful and unlawful use of force or violence upon the person of another. *Restatement*
27 *of the law 2nd of Torts, §16; People v. Duchon*, 165 Cal. App. 2d 690, 332 P.2d 373 (1958).

1 Wounding a person by firing a gun is a battery in the CNMI. An assault is an unlawful
2 attempt, to commit a violent injury on the person of another. 6 CMC § 1201(a); *Restatement*
3 *of the Law 2nd of Torts*, §21; *People v. Egan*, 91 Cal. App. 44, 266 P. 581 (1928). See 5
4 Witkin, Summary of California Law, 10th Edition, Torts § 381 et seq.. Every battery
5 includes an assault, and the defendant alleged to have committed an assault can be found
6 liable for that assault even though the evidence shows an actual battery. *People v. Heise*, 217
7 C. 671, 20 P.2d 317 (1938). If the batter takes place in the performance of an unlawful act,
8 the intent to injure is immaterial. The actor is answerable for all consequences that directly
9 and materially result, though unintended. *Restatement of the law 2nd of Torts*, §16(1).

10 The elements of the cause of action for an Intentional Infliction of Emotion Distress
11 requires a plaintiff to allege outrageous intentional or reckless conduct or unlawful acts of
12 the defendants which as a proximate result cause fear and sever emotional distress to the
13 Plaintiff all to Plaintiff's damage. 38 A.L.R. 4th 998. *Restatement of the Law 2nd of Torts*,
14 §46.

15 The alleged facts of the Complaint give notice to Defendant Darrel of the relief
16 sought and the facts under notice pleading in support of the grounds for relief.

17 The Federal Rules of Civil Procedure, Rule 8 requires only that the complaint
18 contain facts constituting a cause of action. *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2
19 L.Ed. 2d 80 (1957); *Hanna v. Plumer*, 380 U.S. 460, 85 S.Ct. 1136, 14 L.Ed. 2d 8 (1965).
20 The Complaint has a statement of jurisdictional grounds, a statement of the claim, and a
21 demand for judgment. Rule 8(a) has been satisfied. *Bautista v. Los Angeles County*, 216
22 F.3d 837 (9th Cir. 2000).

23
24 **DEFENDANT DARREL'S STATEMENT**
25 **INTRODUCING ADDITIONAL FACTS**

26 Seemingly, based upon Defendant Darrel moving papers, he believes that as he is
27 incarcerated and may be indigent, that those allegations are grounds for dismissal. However,
28

1 he has provided no support for such a theory and that theory is not supported by law.

2 The allegations of Defendant Darrel that he did not actually fired the gun that cause
3 the injury to Plaintiff and that the statement in his moving papers that neither Defendant John
4 Pangelinan nor Defendant Darrel intended to injure Plaintiff are not grounds for dismissal
5 nor grounds for a grant of summary judgement. Their intent is not an element of an assault
6 and battery upon which Plaintiff is bringing his cause of action.

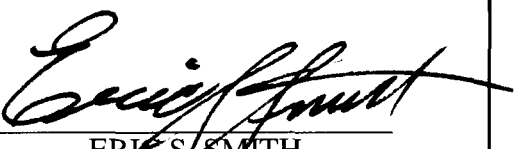
7 Defendant Darrel further bases his motion on the fact that he was not convicted of
8 the crime of assault and battery and therefore, the civil cause of action of assault and battery
9 should be dismissed. No authority is given for this proposition and Plaintiff knows of none.

10
11 **CONCLUSION**

12 The Complaint clearly alleges that Defendant Darrel participated in a burglary and
13 robbery during which Plaintiff was injured. These allegations state a claim on which relief
14 may be granted.

15 The Plaintiff requests that this Court deny the motion to Dismiss or in Alternative for
16 Summary Judgment in its entirety and that the Defendant Darrel be required to respond to
17 the Complaint immediately.

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19 Dated: January 25, 2006

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23 ERIC S. SMITH
24 Attorney for Plaintiff
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